

Minutes

WARRICK COUNTY AREA BOARD OF ZONING APPEALS
Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
March 22, 2021 at 6:00 P.M.

PLEDGE OF ALLEGIANCE:

MEMBERS PRESENT: Mike Moesner, Chairman; Jeff Willis, Terry Dayvolt, Doris Horn, Paul Keller.

Also present was Morrie Doll, Attorney, Molly Barnhill, Executive Director, and Katelyn Cron, Assistant Director.

MEMBERS ABSENT: Jeff Valiant and Mike Winge

MINUTES: Upon a motion made by Terry Dayvolt and seconded by Paul Keller the Minutes of the last regular meeting held February 22, 2021 were approved as circulated.

Chairman Moesner explained the Rules of Procedure.

SPECIAL USES:

SPECIAL USE: BZA-SU-21-07

APPLICANT & OWNER: Reads, LLC by Gianender Rathee, Secretary

PREMISES AFFECTED: Property located on the north side of High Pointe Drive approximately 650 feet west of the intersection formed by High Pointe Drive and Park Place Drive, Lot Numbers 12 & 13 in Park Place Phase IV PUD Subdivision. Ohio, Twp. 8180 High Pointe Dr.

NATURE OF CASE: Applicant requests a Special Use, SU 15, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: an ILP to be issued for a School/Childcare facility in a "PUD/C-4" General Commercial Zoned District with a planned unit development. (Advertised in The Standard on March 11, 2021).

Alejandro Mojica, Project Engineer at Morley.

Chairman Moesner called for a staff report.

Mrs. Barnhill said we do have all the white pay receipts but we are missing two green cards, one from Maken Corp. and the other from Maken Corp. and Ubehlor Homes so when you get those back please bring them in. She said the existing land use is vacant. She said the surrounding zonings and land use is as follows to the north is zoned "C-4/PUD" being Park Place IV, to the east, south, and west are zoned "C-4" General Commercial. She said to the east is High Pointe Centre North Section 1 with Bob's Gym. She said to the south is sectional property, which is

vacant and High Pointe North Section 1G being Zaxby's Restaurant. She said to the west is Lynn Auto Body Collision Center and vacant property. She said there is no flood plain. She said for their street access, they have filed a commercial driveway permit for a new entrance onto High Pointe Drive. She said they will either need to post surety or complete the construction of the entrance prior to obtaining the improvement location permit. She said the applicant's statement is *The proposed use for this area includes a new child care facility, parking lot, playground areas, and supporting facilities. The requested special use is to allow for construction of a new child care facility.* She said the application is in order.

Chairman Moesner said thank you Molly. He asked do you have anything to add to the report sir.

Alejandro Mojica said yes, I have brought some exhibits for everyone. He said tonight we are here to request the special use to allow the construction of a new childcare facility. He said the name of the facility is Kiddie Academy, it is a franchise that is coming into town to provide their services. He said on page one right there you can see in red is where the site is located. He said Bob's Gym is adjacent to the property. He said Zaxby's and Dairy Queen are across the street. He said this lot fronts High Pointe Drive. He said we feel that this is a great location for the new childcare facility because there are many residential subdivisions in the area so this is a good centralized location. He said on the second page, we showed the basics of the improvements. He said the blue is the building, the green which is adjacent to the pond is going to be fenced in, the parking lot is going to be in front of the building and facing High Pointe. He said on the third page you can see a zoomed in version of our site plan that was discussed at the site review meeting. He said everything was in order and the only thing we are missing for that is the special use that we are here tonight to request and with that I will open that for any questions.

Chairman Moesner asked this is a nation wide franchise right.

Alejandro Mojica said that is correct.

Chairman Moesner asked approximately how many kids and what ages are you talking about here.

Alejandro Mojica said I think there is going to be up to, if im not saying it incorrectly, it is going to be around 140 but if you need a hard number on that.

Chairman Moesner said well that isn't really nessecary, I was just asking on that.

Alejandro Mojica said okay well and I believe there are anywhere from Kindergarten, or no even younger, toddlers ages 2-3 all the way to age 12.

Doris Horn asked so you said this will hold about 140.

Alejandro Mojica said yes, about that range.

Chairman Moesner asked do you know approximately how many people would be employed in something like this.

Alejandro Mojica said I think it is around 20-30 if I am saying it correctly. He said the total, employees and children, it was around 160.

Chairman Moesner asked any other questions from the Board members.

Terry Dayvolt asked is there a requirement for so many children you have to have an employee for that amount of children.

Alejandro Mojica said that I am not really sure about...

Terry Dayvolt interjected it sounds kind of low to me, but that's me.

Alejandro Mojica said you know it is a franchise so I am sure they have their own standards and I am sure they are following whatever state guidelines they need to teach the children. He said my assumption is that there going to have an adequate number of teachers per student.

Terry Dayvolt said okay what about the fencing you are having between the play area and that retention pond.

Alejandro Mojica said right, it is going to be a fenced in area, an opagae, and it is probably going to be like something you see on a residential house. He said you know something vinyl and it will be enclosed so children will not be able to see through that.

Terry Dayvolt asked how tall will it be.

Alejandro Mojica I think it will be around 4 to 5 feet.

Terry Dayvolt said and you said there will be 12 year olds there.

Alejandro Mojica said yeah.

Terry Dayvolt said there can be 12 year olds.

Alejandro Mojica said uh huh.

Terry Dayvolt said well that would be my only thing, what if one of the kids went over a 4' fence to get to that retention pond.

Alejandro Mojica said the fence is going to be 5' tall, for sure.

Terry Dayvolt said okay.

Chairman Moesner asked any further questions from the Board members.

Jeff Willis said my only question I have, and this may be more toward Morrie, what we are dealing with the church right now is this going to prohibit the sale of alcohol in any restaurants or any other locations or affect the Casey's that is going in down the road.

Attorney Doll said the minimum distance requirement is applicable to churches and I believe schools, so if this has a license from the Indiana Department of Education then it might come into play yes.

Jeff Willis said okay. He asked do you know how far it is from the Casey's that is going in down there by Walmart.

Alejandro Mojica said not off the top of my head.

Attorney Doll said well that is quite a ways.

Jeff Willis said oh, okay. He said I just wanted to make sure that if they are going in and they haven't applied for their permits yet that they do not get tripped up.

After ascertaining there were no questions from the Board and there were no remonstrators for or against, Chairman Moesner called for a motion.

Doris Horn made a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required Federal, State, or Local permits being obtained.
2. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
3. Subject to all public utility easements and facilities in place.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.

5. Subject to any required Improvement Location Permits being obtained.
6. Subject to any required Building Permits being obtained.

Paul Keller seconded the motion and it carried unanimously.

Mrs. Barnhill said Alejandro we can have the approval ready Wednesday for you to pick up.

VARIANCE: BZA-V-21-08

APPLICANT & OWNER: Westfall Investments, LLC by Carl Westfall, owner

PREMISES AFFECTED: Property located on the west side of SR 261 approximately 600' north of the intersection formed by SR 261 and SR 66, Ohio Twp. Lot No. 8 in Englebrecht Place Sec 2 Ph 2, Re-plat Lots 8 & 11 Subdivision. *7765 Park Place Dr.*

NATURE OF CASE: Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a message board (SU 8) to be issued as an off premise sign not meeting the minimum required spacing between off premise signs of 1,000 feet being 778.5' from the nearest billboard. All in "C-4" General Commercial Zoning District. (*Advertised in The Standard on March 11, 2021*)

Carl Westfall, Westfall Investments, LLC Owner, was present.

Chairman Moesner called for a staff report.

Mrs. Barnhill said we have all but one of the green cards back, but we do have the return receipt from Living Word Christian Church and it was mailed correctly. She said the existing land use is a commercial business. She said for the surrounding zoning and land use, to the north is zoned "C-4" with a convenience store. She said to the east is zoned "C-4" being Warrick Place III with a church and Elite Air. She said to the south is zoned "C-4" with a strip mall. She said to the west is zoned "C-4" being Englebrecht Place Section 2 Phase 2 and is vacant also to the west is zoned "R-2/PUD" being Orchard View Townhouses Section 1D and 1D Phase 2 either vacant or townhomes. She said there is no flood plain and they have an existing driveway on Park Place Dr. She said in their application the proposed sign has an overall height of 50' and will be 35' x 10'. She said they are requesting a relaxation of 221.5' from the requirements. She said everything else is in order.

Chairman Moesner asked do you have anything to add to the staff report.

Carl Westfall said basically I think it was 10'6" by 35'.

Chairman Moesner said correct and 50' in height.

Carl Westfall said well it is 10'6" by 36' to be exact, you might have that... He asked do you have in there double-sided sign.

Mrs. Barnhill said yes.

Carl Westfall said okay, just making sure.

Mrs. Barnhill said it is giving the dimension 9'11".

Chairman Moesner said and then 35'1/3" inches in width and 9'11", yeah.

Mrs. Barnhill asked has it changed.

Carl Westfall said no, I think when I was doing estimates it was a flat 36' so maybe when I, you know I may have not got the exact measurements so maybe that was my misinformation on that. He said it may have been net on that.

Mrs. Barnhill said yeah, it shows it 35' on this.

Carl Westfall said okay so he probably got the exact net measurements so that could be right there. He said the height and everything we did meet the restrictions and everything.

Chairman Moesner asked do you know the approximate height of the existing other billboards in that area.

Carl Westfall said no, sir.

Chairman Moesner asked will they look about the same or...

Carl Westfall said well I think it is supposed to be set up about the same. He said he made sure, Scott made sure it followed the rules. He said I told him I could make it any height because this is going to be on my property only so he was supposed to make sure it didn't go any higher or any lower than what it was supposed to out of respect for the county.

Chairman Moesner asked is this a lighted board.

Carl Westfall said yes, sir.

Chairman Moesner said but it is not an electronic board.

Carl Westfall said no, it is an electronic board.

Mrs. Barnhill said it is a message board.

Carl Westfall yeah because I have several businesses in Warrick County. He said I have Big Boy Toy Storage, Sunrise Flooring, Cabinet Place, Pioneer Carpet Cleaning so this is really for that.

Mrs. Barnhill said well and the maximum height for these signs is 75' for a billboard.

Chairman Moesner said okay well he is well within that then.

Mrs. Barnhill said yes.

Jeff Willis asked is this only going to be used for your business or will you be using it for other places.

Carl Westfall said mostly for mine but there will be some other but I have several different businesses, including the one that rents from me that the property is on, so it will be you know it is Ohio Valley Electric and Solar so he would like to rent spots too from me.

Jeff Willis said right, I didn't know if you were going to be taking it to an open, you know soliciting a lot of billboard advertisement for it.

Carl Westfall said you know, I have some to help pay for the billboard but it is firmly you know... and I like billboards. He said I am just opening Big Boy Toy Storage down the street on Vann Road. He said so I would like to you know with the Sunrise Flooring and Cabinets and Pioneer Carpet Clening, so I could fill a lot of it just myself. He said that makes a large difference, but there will be, to answer your question, there will be others. He said like Ohio Valley Elctric is wanting to rent from me to help pay the bill.

Jeff Willis said right.

Chairman Moesner asked do we have any remonstrators for or against this project.

Andrew Chwang, John Chwang adjacent property owner's son was present.

Andrew Chwang said we own a neighboring piece of property, being the building directly next door. He said the reason we are against the variance is because we do not feel that it is in the best interest of what that intersection is trying to provide. He said as you know, there was a median that was placed there as well as a stop light that was placed there due to increased traffic accidents and the like. He said I have on me just two studies here, one from 2010 and one from 2015, I did not want to drown you all in paperwork because I know you guys have tons of it but it suggests that, especially young people, are prone to be distracted by billboards near intersections, especially digital billboards such as the one featured at Morgan and Green River in Evansville. He said I am not suggesting that billboards are bad, not by any stretch of the imagination, I mean we are all in business or affiliated with business in some way, shape, or form. He said I mean we love billboards but I am just suggesting that its placement is probably not optimal. He said I know that from the Federal Highway and Safety Administration from their CADCO Crash Statistics, for minor statistics, it is approximately \$35,000 per citizen. He said that is just minor accidents, I am not even suggesting anything major so I am once again, not against billboards but I am just simply saying there is no need to induce a risk when none is necessary. He said that is all.

Carl Westfall said can I speak to that.

Chairman Moesner said yes.

Carl Westfall said I am aware of the median put in and I think that that helped that situation a whole lot. He said I will also say that here a couple years ago I had water that I was paying him for and he wanted to buy the property and when I wouldn't sell him the property at his cost he decided to shut my water off, when I had my business there. He said I just have a real problem with that whole situation because he has tried to buy that property several times, at his price not mine. He said I was totally out of town with my other business and you know he shut my water off to my whole business so you know I think there is more motive here than that stuff he just said.

Chairman Moesner asked any other comments.

Andrew Chwang returned to the podium.

Andrew Chwang said I am just, I disagree with everything that was just said. He said not with certain facts, not saying that, not trying to call him anything or something like that, I am just not trying to be personal during a public hearing. He said I stand by my original comments with no ulterior motive, like I said I have done the research, I know what it says, and I believe what I believe. He said I just personally think he should be allowed to have a billboard it just is not the right location that is all.

Chairman Moesner asked any other comments. He asked any other questions from the Board members.

Terry Dayvolt asked Mr. Westfall how far is the sign going to be from the intersection.

Carl Westfall asked well which intersection.

Terry Dayvolt said Peachwood or Fruitwood either one.

Carl Westfall said Fruitwood probably should be on there to be exact.

Chairman Moesner said I see on here it says 104.8' to the property but I don't see a figure here to the intersection.

Carl Westfall said I was able to adjust it one way based on what was able to be done. He said I am sorry I am not able to answer exactly what you're asking because I know there are two intersections, one on the south and one on the north end of that.

Jeff Willis said I think the concern is more on the Fruitwood, the one on the south.

Carl Westfall said Fruitwood I think that was actually, based on that, I think that was closer to 200'. He said I apologize, I would have to.

Mrs. Barnhill said so there plot plan is by Scott Buedel, he is a registered land surveyor, and with our scale it shows about 160' to the Fruitwood Drive pavement.

Carl Westfall said yeah, okay so it was in the ballpark around there so you are probably really close on that. He said it sounds about right. He said the variance on down the street there, a lot were within 500' from each other further north than that. He said there are 2 within 500' and this would end up being almost 650' give or take.

After ascertaining there were no further questions from the Board, Chairman Moesner called for a motion.

Terry Dayvolt made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the area of the property.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.

9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to an Improvement Location Permit being obtained.
 - b) Subject to a Building Permit being obtained.
 - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - d) Subject to all utility easement and facilities in place.
 - e) Subject to no flashing, moving or intermittent lights except white.
 - f) Subject to the plot plan on file and not to be altered or expanded.
 - g) Subject to no use of the words, “stop”, “danger”, “look”, or any other words which would confuse traffic.
 - h) Subject to no rotating or revolving beams of light.
 - i) Subject to any required permits from INDOT.

Mrs. Barnhill said Mr. Westfall you can pick up your approval Wednesday but you will need the State Permit before you can receive your Improvement Location Permit.

Carl Westfall said thank you very much.

ATTORNEY BUSINESS:

Attorney Doll stated we did have a hearing last week in the Warrick Circuit Court to Mr. Hendrickson's objection to the Special Use Variance of Special Use 13 for Peabody Coal Company, Indiana Land Holdings, the matter was taken under advisement of the court, we expect to hear an answer from the judge. He said he is pretty punctual so we expect to hear an answer from the judge fairly soon, this is not the final answer. He said this is just what the petitioner has filed concerning the special Findings of Fact that we filed with the court last fall. He said we anticipate the court will find them approvable and then he will schedule a final hearing on the merits of the case.

Chairman Moesner asked so we are looking at what another 6 months or...

Attorney Doll said no, I don't think so. He said it will be quicker than that, I think it will be sometime in the summer but I don't think it will be next fall.

Mike Moesner said okay, thank you Morrie. He asked anything else.

Attorney Doll said no sir.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Barnhill stated she had nothing further to report.

Chairman Moesner called for a motion to adjourn.

Terry Dayvolt said before we adjourn I would like to wish Mr. Moesner, our Chairman, a Happy Birthday.

The Board said Happy Birthday.

Chairman Moesner said thank you.

Terry Dayvolt stated I make a motion that we adjourn. Doris Horn seconded the motion and it carried unanimously. The meeting adjourned at 6:43 p.m.

Mike Moesner, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held March 22, 2021.

Molly Barnhill, Executive Director